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dba Instacart

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10
11 DOMINIC COBARRUVIAZ,
12 individually, and on behalf of all others
13 similarly situated;

14 Plaintiffs,

15 vs.

16
17 MAPLEBEAR, INC., dba
18 INSTACART; and DOES 1 through
19 100, inclusive,

20 Defendants.

CASE NO. C 15-cv-00697

**NOTICE OF REMOVAL OF CLASS
ACTION TO FEDERAL COURT**

[Diversity Jurisdiction, 28 U.S.C. §§
1332(d)(2), 1441, 1446 and 1453]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT defendant Maplebear Inc., dba Instacart
4 (“Instacart”) hereby removes this action to the United States District Court for the
5 Northern District of California, and in support thereof, respectfully shows the Court
6 as follows:

7 **STATEMENT OF THE CASE**

8 1. Plaintiff seeks to certify a class of “[a]ll persons who performed
9 grocery delivery work anywhere in the United States for or on behalf of one or more
10 of the Defendants from January 1, 2012 to the present.” Complaint at ¶ 10.

11 2. Plaintiff seeks, on behalf of himself and the purported class,
12 compensatory damages, restitution and disgorgement, an injunction, statutory
13 penalties, pre-judgment and post-judgment interest, and attorneys’ fees and costs.

14 3. The Class Action Complaint was filed January 9, 2015 and served
15 January 15, 2015. The Complaint is removable under the Class Action Fairness Act
16 of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and 1453(b). Instacart has satisfied all
17 procedural requirements of 28 U.S.C. § 1446 and thereby removes this action to the
18 United States District Court for the Northern District of California pursuant to 28
19 U.S.C. §§ 1332, 1441, 1446 and 1453.

20 **THE REQUIREMENTS FOR REMOVAL**

21 **UNDER CAFA ARE SATISFIED**

22 4. CAFA fundamentally changed the legal standards governing removal
23 jurisdiction for class actions. Congress explicitly stated that CAFA’s “provisions
24 should be read broadly, with a strong preference that interstate actions should be
25 heard in a federal court,” on the grounds that state courts were not adequately
26 protecting defendants against class action abuses. S. Rep. No. 109-14, at *43
27 (2005). Rather than emphasizing a strict constructionist view of the statute against
28

1 removal jurisdiction, Congress instructed district courts to “err in favor of exercising
2 jurisdiction.” *Id.* at 42-43.

3 5. The United States Supreme Court recently clarified the standards for a
4 notice of removal under CAFA. In *Dart Cherokee Basin Operating Co. v. Owens*,
5 574 U. S. ____ (2014), the Supreme Court held that courts must apply the same
6 liberal rules to removal allegations as to other matters of pleading. *Id.* at 5. The
7 Supreme Court also held that no presumption against removal exists under CAFA,
8 which was enacted to facilitate adjudication of certain class actions in federal court.
9 *Id.* at 6.

10 6. As shown below, this action satisfies the requirements for diversity
11 jurisdiction under CAFA, 28 U.S.C. § 1332(d)(2).

12 **A. Class Action.**

13 7. This lawsuit is a class action as defined by 28 U.S.C. § 1332(d)(1)(B).
14 CAFA defines a “class action” as “any civil action filed under rule 23 of the Federal
15 Rules of Civil Procedure or similar State statute or rule of judicial procedure
16 authorizing an action to be brought by 1 or more representative persons as a class
17 action.” *Id.* Plaintiff styles his complaint a “Class Action” and alleges that he
18 brings it “individually and on behalf of a proposed class.” Complaint at ¶1.

19 **B. Diversity of Citizenship.**

20 8. At the time this lawsuit was filed and as of the date of this notice,
21 Instacart was and is a Delaware corporation with its principal place of business at
22 420 Bryant Street, San Francisco, CA 94107. As Plaintiff acknowledges, “Instacart
23 maintains substantial ongoing business operations throughout the United States,”
24 and seeks to certify a class including individuals who “work anywhere in the United
25 States.” Complaint at ¶1, 10. Approximately 7,696 individuals performed grocery
26 delivery work for Instacart between January 2012 and the present, approximately
27 3,208 of which reside in California. Because at least one member of the proposed
28 class is from a state other than California, and the Defendant is a citizen of both

1 Delaware and California, the diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is
2 met.

3 **C. Amount in Controversy.**

4 9. The Supreme Court recently clarified that the notice of removal need
5 only include a plausible allegation that the amount in controversy exceeds \$5
6 million and need not include evidentiary submissions. *Dart Cherokee*, 574 U. S., at
7 ____ (slip op., at 3). Thus, a defendant’s amount in controversy allegation should
8 be accepted when not contested by a plaintiff or questioned by the court. *Id.* If a
9 plaintiff does contest the allegation, *both* sides must submit proof and the court will
10 decide, by a preponderance of the evidence, whether the amount in controversy
11 requirement has been satisfied. *Id.*

12 10. Instacart denies that a class is the proper vehicle for Plaintiff’s claims,
13 or that Instacart is liable for any such claims, but has calculated the amount in
14 controversy for purposes of this notice by taking Plaintiff’s Complaint at face value.

15 11. The Complaint is facially silent on the total amount in controversy.
16 However, as detailed below, even the compensatory damages for unpaid wages and
17 non-productive time for a subset of the putative class period alone satisfy the
18 amount-in-controversy requirement of 28 U.S.C. § 1332(d)(2).

19 12. Plaintiff claims that since January 2012 to the present, “[d]uring non-
20 productive time, or time during which Plaintiffs were required to make themselves
21 available for work but were not given an assignment, Plaintiffs were not
22 compensated in any manner whatsoever.” *See* Complaint at ¶¶ 30-31, 39-40. The
23 Complaint also alleges that Plaintiff and the members of the putative class
24 “regularly worked and continue to regularly work in excess of 8 hours per day or 40
25 hours per week,” but have not been paid any overtime. *See* Complaint at ¶ 42. It is
26 difficult to evaluate with precision the amount in controversy because Plaintiff does
27 not specifically allege the number of non-productive hours, or the number of regular
28 and overtime hours Instacart allegedly failed to pay.

1 13. From July, 2014 through the first week of February, 2015, putative
 2 class members worked on-duty for 2,580,054 hours, for which they were
 3 compensated. Furthermore, during this time period, there were 2,229 grocery
 4 deliverers any given week, working an average of 35 hours a week each.

5 14. Conservatively assuming that for every five hours worked, putative
 6 class members were not compensated for one additional “non-productive” hour,
 7 potential damages for non-productive hours worked would total \$4,644,097.2 from
 8 July, 2014 through the first week of February, 2015 *alone*.¹ Plaintiff also seeks
 9 damages for non-productive time from January 1, 2012 through the end of June,
 10 2014.

11 15. Similarly, conservatively assuming that putative class members worked
 12 5 hours of overtime per week for the 33 week period from July, 2014 through the
 13 first week of February, 2015, putative class members could be entitled to aggregate
 14 damages totaling at least \$1,655,032.² Plaintiff also seeks damages for overtime
 15 wages from January 1, 2012 through the end of June, 2014.

16 16. In addition to the non-productive time and overtime wages discussed
 17 above, the Complaint seeks the following relief: expense reimbursement pursuant to
 18 the California Labor Code, IWC Orders and other applicable laws and regulations;
 19 civil and statutory penalties under the Private Attorney General Action, Labor Code
 20 § 2698 *et seq.*; restitution and disgorgement under Business and Professions Code §
 21 17200; an order enjoining Instacart from continuing to engage in the alleged conduct
 22 described in the Complaint; pre-judgment and post-judgment interest; attorneys’
 23 _____

24 ¹ The total 2,580,054 “on-duty” hours *divided by 5 equals* 516,010.8 total “non-
 25 productive” hours worked from July 2014 to February 2014. The total 516,010.8
 26 non-productive hours *multiplied by* \$9 (the California minimum wage effective July
 1, 2014) *equals* \$4,644,097.2.

27 ² 2,229 average weekly potential class members *times* \$4.50 (\$9 CA minimum
 28 wage *times* 0.5) *times* 5 overtime hours per week *times* 33 weeks *equals* \$1,655,032.

1 fees, costs and expenses as authorized by the California Labor Code; and other
2 further relief as the Court deems just and proper. *See* Prayer for Relief. Given these
3 requests for relief, the amount in controversy far exceeds \$5,000,000 in the
4 aggregate, and this Court has jurisdiction under CAFA.

5 **D. Number of Proposed Class Members.**

6 17. Although Instacart denies that Plaintiff's claims have any merit, it
7 believes the putative class pleaded by Plaintiff exceeds 7,000 members. Complaint
8 ¶ 10 (defining putative class as "[a]ll persons who performed grocery delivery work
9 anywhere in the United States for or on behalf of one or more of the Defendants
10 from January 1, 2012 to the present."). Over the past three years, there have been at
11 least 7,696 individuals who performed grocery delivery work for Instacart.
12 Accordingly, the action satisfies the requirement of 28 U.S.C. § 1332(d)(5) that the
13 proposed class include at least 100 persons.

14 **E. Timeliness.**

15 18. This removal notice is timely filed as required by 28 U.S.C. § 1446(b).
16 Plaintiff filed his Complaint January 9, 2015 and Instacart was served January 15,
17 2015. Instacart filed this notice within thirty days of receipt of the Complaint.

18 **F. Venue.**

19 19. The United States District Court for the Northern District of California
20 is a federal judicial district embracing the San Francisco Superior Court of the State
21 of California, where Plaintiff originally filed this suit. Venue is therefore proper
22 under 28 U.S.C. § 1441(a).

23 **G. No Exceptions Apply.**

24 20. The exceptions to removal under 28 U.S.C. §§ 1332(d) and 1446 do not
25 apply here. Specifically, neither the "home state exception" nor the "local
26 controversy" exception to CAFA apply because less than two-thirds of the putative
27 class members are citizens of California. *See* 28 U.S.C. §§ 1332(d)(4)(A), (B). The
28 "discretionary" exception is also not appropriate in this case. *See* 28 U.S.C. §§

1 1332(d)(3). The claims asserted in this suit involve matters of national or interstate
 2 interest, which federal courts have repeatedly considered in similar wage class
 3 actions involving independent contractors. *See e.g. O’Conner, et. al. v. Uber*
 4 *Technologies, Inc., et. al*, Case No. 13-cv-3826 (N.D. Cal.); *Cotter et al. v. Lyft Inc.,*
 5 *et al.*, Case No. 13-cv-04065 (N.D. Cal.).

6 **THE OTHER PROCEDURAL REQUISITES**
 7 **FOR REMOVAL ARE SATISFIED**

8 21. Instacart has complied with 28 U.S.C. §§ 1446(a) and (d). Under 28
 9 U.S.C. §§ 1446(a), a true and correct copy of all of the process, pleadings, or orders
 10 on file in the state court or served on Instacart in the state court are attached as
 11 Exhibit 1. Pursuant to 28 U.S.C. §§ 1446(d), Instacart has served written notice of
 12 this notice of removal, with a copy of this notice of removal attached thereto, to
 13 Plaintiff’s attorneys. Furthermore, a notice of filing of removal, with a copy of this
 14 notice of removal attached thereto, will be filed promptly with the clerk of the
 15 Superior Court of the State of California, County of San Francisco, Case No. CGC-
 16 15-543583. Copies of the notice and the certificate of service of the notice to
 17 Plaintiff’s attorneys is attached as Exhibit 2. (Exhibit A to Exhibit 2, which is a
 18 copy of this notice, is not attached for the Court’s convenience. Defendant will
 19 provide it up on request.)

20 **CONCLUSION**

21 By this notice, Instacart does not waive any objections it may have as to
 22 improper service, jurisdiction, or venue, or any other defenses or objections to this
 23 action. Instacart intends no admission of fact, law, or liability by this notice, and
 24 reserves all defenses, motions, and pleas. Instacart prays that this action be removed
 25 to this Court for determination; that all further proceedings in the state court suit be
 26 stayed; and that Instacart obtain all additional relief to which it is entitled.

1 DATED: February 13, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

2
3
4 By



5
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8 Matthew Hosen
9 Attorneys for Defendant Maplebear, Inc.,
10 dba Instacart
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